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SUBJECT: NEPAL: SECOND ANNUAL ANTI-TRAFFICKING IN
PERSONS (TIP) REPORT

REFS: STATE 12686

11. (U) Post's submission for the second annual Anti-Trafficking in Persons (TIP) Report follows. The report addresses all of reftel's questions, but in prose form. Embassy point of contact for the report is Political/Economic Officer G.A. Donovan (telephone: 977-1-411-179; fax 977-1-410-723).

12. (SBU)

Overview

Trafficking in women and children from Nepal to other countries for exploitative employment is a serious problem. Those trafficked are most often poor, uneducated young women from Nepal's remote, undeveloped regions. In rare instances, trafficking of boys has also been reported. Nepalese trafficking victims are most often taken to India for work in that country's sex industry and for bonded labor. Some victims are also trafficked to Hong Kong, Saudi Arabia, and other countries in the Middle East. The Ministry of Women, Children and Social Welfare (MOWCSW) has identified 26 high-priority districts for anti-trafficking interventions. Most victims are transported overland to India. Allegedly, women and children migrating to Kathmandu and other urban areas to find work have been subsequently trafficked overseas.

An ongoing Maoist insurgency has used violence to wrest control over remote areas of Nepal from the central government and many trafficking victims originate in those areas. The insurgents have forcefully impressed youngsters - including girls as young as twelve - into their ranks. Post has confirmed that some of these forced conscripts have been raped. The conflict has displaced thousands of the poorest Nepalese, and all of these are potential victims of traffickers.

In general, the main contributing factors to the problem of trafficking in persons from Nepal are poverty, lack of alternative employment opportunities in the country, illiteracy, ignorance about the dangers of prostitution, family disharmony, domestic violence and gender discrimination.

The magnitude of trafficking remains difficult to measure. Reliable data is not available. NGOs have estimated that between 5000 and 12,000 women and children are trafficked from Nepal each year. These numbers have not been validated and are not internally consistent. NGOs are seeking better estimates.

Government officials, police, and NGOs suspect organized criminal groups and "marriage brokers" are the primary perpetrators of trafficking in Nepal. Most traffickers are from Nepal, but have links to brothels in India. NGOs estimate that approximately half of victims are lured to India with the promise of good jobs and marriage, many others are sold by a family member and a small number are kidnapped. However, no firm numbers are available. NGOs have found that once prevention programs are instigated in a district, the traffickers move on to other areas.

While Nepal lacks both the resources and institutional capability to address its trafficking problem effectively, the government has instituted a National Task Force at MOWCSW with personnel assigned to coordinate the response. The Ministry has also established district-level task forces in many high-priority districts. In addition, both ILO and UNDP are working with the Ministry to increase its capacity to respond through prevention, protection, and prosecution. There are programs in place to train the Police, and the MOWCSW works closely with local NGOs to rehabilitate and otherwise assist victims.

The government lacks financial and other resources to control trafficking. In particular, the police lack both training and resources, while the courts are overburdened and susceptible to corruption. Government welfare agencies are generally incapable of delivering effective public outreach programs or assistance to trafficking victims. As a result, anti-trafficking efforts have been primarily the domain of NGOs and bilateral donors. The government has promulgated a "National Plan of Action" to combat trafficking, but has not yet implemented it completely.

Prevention -----

MOWCSW has primary responsibility for the development and coordination of the Government of Nepal's anti-trafficking efforts. In addition, MOWCSW has instituted a National Task Force Against Trafficking which includes personnel of the Ministry of Labour and Transportation Management, Ministry of Home, Ministry of Foreign Affairs, Ministry of Law, Justice and Parliamentary Affairs, Ministry of Education and Sports, Ministry of Health, National Planning Commission and Nepal Police. Two representative NGOs are also members.

MOWCSW, NGOs and UNIFEM have all implemented local, regional and national information campaigns about trafficking in persons. MOWCSW operates a program in 47 districts to emphasize to parents the importance of sending their children to school. The Ministry also publishes a newsletter addressing issues of concern to women and children. The Ministry of Education administers a number of programs intended to increase school enrollment.

The Government is generally receptive to private prevention programs and makes its personnel readily available to take part in anti-trafficking training programs. MOWCSW has appointed a "point person" to foster a collaborative relationship with donors and NGOs as they work toward anti-trafficking goals. For example, USAID developed an anti-trafficking comic book with the Asia Foundation; to date, the comic has been distributed to 130,000 women in 21 districts. This program led to the creation of 120 local anti-trafficking campaigns. As a result of these and other initiatives, attitudes towards victims have begun to change and parents are demanding more background information about potential suitors before agreeing to arranged marriages.

Nepal's open land border with India does not allow for stringent monitoring. One NGO has had some success monitoring the border independently. UNICEF has provided training for police and immigration officials in identifying potential trafficking victims at the border. Border guards commonly accept bribes to allow contraband and trafficked girls in or out of the country.

Investigation and Prosecution of Traffickers -----

The Human Trafficking Control Act of 1986 is the current anti-trafficking legislation. It prohibits the following:

- Selling of a human being for any purpose;
- Taking any person to foreign territory with an intention of selling that person to a third party;
- Involving any woman in prostitution by enticement, allurement, fraud, threat, coercion, or any other means;
- Abetting, assisting, conspiring, or attempting to carry out any of the above acts.

The 1986 Act is flawed. It does not criminalize the separation of a minor from his or her legal guardian with the intent of trafficking the minor. Under the terms of the Act, no crime occurs until the victim and perpetrators are outside Nepalese jurisdiction. Receiving trafficked persons is similarly not covered. The Act makes no provision for compensation or protection of trafficking victims. Victims are often reluctant to testify because trials under the Act are held in open court. The 1986 Act provides for jail terms of up to 20 years for traffickers.

MOWCSW has prepared legislation introduced in Parliament to toughen penalties against traffickers and rectify some of the shortcomings of the 1986 Act.

Some prosecution has taken place. According to the 1999-2000 annual report of the Attorney General's Office, 470 anti-trafficking cases have been filed, of which 86 resulted in convictions and 53 in acquittals, while 331 remain undecided. A survey conducted of three jails in

Kathmandu by the Human Rights and Environment Forum (HUREF) found 180 convicted or alleged traffickers in jail. Those convicted were serving sentences of up to 20 years.

Penalties for rape vary with the age of the victim. If the victim is under 16, jail sentences of up to 10 years are possible. For victims 16 or over, sentences can be up to five years. In either case, the court may order a convicted rapist to give half his property to the victim. NGOs state that victims are not detained, jailed or deported. If the victim is a foreigner, she will be handed over to the concerned Embassy.

Government officials, police, and NGOs suspect organized criminal groups and "marriage brokers" are the primary perpetrators of trafficking in Nepal. They note that parents and other relatives of trafficking victims are often complicit as well. By its own admission, the government lacks the "skilled manpower" necessary to effectively investigate cases of trafficking. The Nepal Police have, since 1996, trained a limited number of their personnel on investigation of trafficking. However, the shortfall of skilled investigators remains. The police report no use of special investigative techniques in trafficking investigations.

At a SAARC (South Asian Association for Regional Cooperation) summit held in January, 2002, Nepal, together with India and other South Asian countries, signed the SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution. SAARC leaders also called for the establishment of a voluntary fund for the rehabilitation and reintegration of the victims of traffickers.

In October, 2000, the U.N. Development Fund for Women (UNIFEM), NGOs and Nepal's Home Ministry together hosted a regional workshop with senior police officers to enhance cross-border anti-trafficking collaboration. NGOs and law enforcement officials discussed ways of improving bilateral and regional cooperation on investigating and prosecuting traffickers and ensuring better protection of victims. Several follow-up meetings involving Nepal and India have taken place.

Nepal has not had occasion to extradite its own nationals charged with trafficking in other countries. The government is not prohibited by law from extraditing its own nationals. Presumably, Nepal would extradite non-Nepalese persons charged with trafficking in other countries, though to our knowledge no government has ever made such a request.

Post has no evidence that governmental authorities facilitate, condone, or are otherwise complicit in human trafficking. However, local anti-trafficking NGOs report that individual local officials and border police sometimes accept bribes from traffickers in exchange for allowing the traffickers and their victims to cross the border. Under Nepal's constitution, the Commission for Investigation of Abuse of Authority has the power to investigate incidences of corruption by holders of public office.

On September 13, 2001, Nepal ratified ILO Convention 182, which prohibits the worst forms of child labor.

Nepal has not yet ratified the following international instruments:
-- the Sale of Children Protocol, which supplements the Rights of the Child Convention; or
-- the Protocol to Prevent Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the UN Convention Against Transnational Organized Crime.

Protection and Assistance to Victims -----

The GON provides limited funding to local NGOs to provide assistance to victims of trafficking with rehabilitation, medical care and legal services. The GON does not fund foreign NGOs. Bilateral and multilateral donors, working in collaboration with the GON through the MOWCSW, do fund local and foreign NGOs to provide victim assistance.

The Ministry of Labor and Social Welfare sponsors job and skill training programs in several poor districts known for sending prostitutes to India. In May 1999, MOWCSW opened the Women's Skill Development and Training Center, a rehabilitation and skills training center for women returned from being trafficked and for women and girls at risk of being trafficked.

The government does protect the rights of victims. Trafficking victims are not detained, jailed or deported, nor are they prosecuted, as trafficking victims, for violations of other laws. While the GON has not actively encouraged trafficking victims to file civil suits or seek legal action against the traffickers, once the victim does file a civil suit or make a criminal complaint the government will prosecute the case at no cost to the victim. At the same time there is no provision for the government to provide protection to victims or witnesses. The GON has initiated a "Women's Cell" of the police whose aim is to assist victims of trafficking and domestic violence.

There are over 40 national-level NGOs working on the issues of trafficking. With the GON's endorsement, many NGOs have public information and outreach campaigns in rural areas. They also provide prevention education, micro-finance, rehabilitation, advocacy and legal assistance. Two representative NGOs are members of the MOWCSW's National Task Force Against Trafficking. The GON works closely with the NGOs to provide services to the victims and to assist in the implementation of the National Plan of Action.

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